

TITLE 3: HEALTH AND SANITATION AND ANIMAL REGULATIONS

DIVISION 3: ENVIRONMENTAL HEALTH

Chapter 3: Public Nuisance Abatement.

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33.031 Authority.

Pursuant to the authority cited in Chapter 1 of Division 3 of Title 3 of the San Bernardino Code and other relevant State law, the San Bernardino County Board of Supervisors authorizes the Chief of the County Fire Department (CFD) or the Chief of the Division of Environmental Health Services (DEHS) of the Public Health Department and the Enforcement Officers of the CFD or the DEHS of the County of San Bernardino to enforce the provisions of this Public Nuisance Abatement Chapter within this jurisdiction. Such authority includes the right to enter land for investigation, posting or serving notice, or to cause abatement as herein provided. For purposes of this chapter, all references to DEHS shall also include the CFD, all references to the Director of DEHS shall mean the Chief of the DEHS and shall also include the County Fire Chief, and all references to employees of DEHS shall also include employees of CFD.

Commercial poultry ranches and other activities subject to specific vector control provisions elsewhere in Division 3 of Title 3 of the San Bernardino County Code, shall be exempt from conflicting provisions in this Chapter.

Renumbered and restated Ordinance #3105 (1986); Amended #3611 (1995);

33.032 Definitions.

Definitions stated in other chapters of this E.H. Code shall supplement the following:

(a) "Public Nuisances" shall include:

(1) Breeding and harborage places for invertebrate and vertebrate vectors under conditions of known public health significance including those for mosquitoes, flies, and rodents, as more specifically set forth at Chapter 8 (Waste Management) and Chapter 9 (Insect, Rodent and Other Vector Control) herein.

(2) Accumulations of junk, trash, waste, debris, garbage, rubbish and related materials as set forth more specifically at Chapter 8 (Waste Management) herein and including: scrap metals, scrap lumber, scrap plastic or polymer materials, scrap building materials, scrap pipe or plumbing fixtures, junked appliances or furniture, dismantled, junked, or wrecked motor vehicles, machinery, or equipment or parts thereof, rags, bedding, tree and landscape trimmings, rope, waste oil, batteries, paper, rubber, and similar accumulations under conditions incompatible with their originally intended use or location as set forth more specifically in the planning and zoning laws of this jurisdiction, or otherwise in any manner detrimental to the public health.

(3) Hazardous materials which are corrosive, toxic, ignitable, irritants, infectious, strong sensitizers, generate pressure by decomposition or other means or otherwise are present under circumstances that could endanger the public health and safety, as set forth more specifically herein at Chapter 7 (Hazardous Materials and Toxics Control).

(4) Incompatible materials unsuitable for commingling where circumstances suggest a likelihood of explosion, spontaneous combustion, chemical reaction, fire, extreme heat, toxic substance formulation or other dangerous reaction so as to endanger the public health and safety, as set forth more specifically herein at Chapter 7 (Hazardous Materials and Toxics Control) and by the fire codes of this jurisdiction.

(5) Infectious and related wastes and odors therefrom including from: hospitals and medical facilities, sewers, cesspools, septic tanks, leach lines and fields (whether of individual or multiple ownership), toilets, holding tanks, seepage pits, butcher offal, pet droppings, excrement, urine, laundry water, manure accumulations, dead animals, putrid matter, and similar materials under circumstances endangering the public health and safety, as set forth more specifically herein at Chapter 7 (Hazardous Materials and Toxics Control) and Chapter 8 (Waste Management).

(6) Open, unused, or abandoned: buildings, structures, foundations, basements, excavations, swimming pools, wells, ponds, pits, shafts, and similar unfenced, unsealed, or unsecured situations of immediate danger to the public health and safety.

(7) Any device, sign, decoration, design, or fence, which is outside of a four-walled and roofed structure and determined to be unlawful by reason of its condition or inappropriate use or location as defined in Title 8 (Development Code) of the San Bernardino County Code or by the development code of this jurisdiction.

(8) Any animal, fowl, or bird, wild or domestic, other than cats, dogs, canaries or birds of the psittacinae family, within seventy (70) feet of any school, church, hospital, public place or business, or any residence or dwelling house or other building used for human habitation, other than the personal dwelling of the person owning or controlling such animal, fowl, or bird. The subsection shall not apply to accredited laboratories regulated by the State Department of Health Services.

(9) Any privy or outhouse: on premises where domestic water under pressure is available; without suitable shelter to afford privacy and protection from the elements; without an automatically self-closing door adequate to exclude flies from the pit; in disrepair; with vaults filled with excreta not regularly and thoroughly disinfected; within forty (40) feet of any dwelling, residence, school, church, hospital or public place of business, except with the permission of the occupants or operators of such dwelling, residence, school, church, hospital, or public place of business.

(10) Any toilet, washroom, or bath or shower room for the use of employees, patrons, or the public where: the floors, walls, ceilings, lavatories, urinals, toilet bowl, bath or showers have accumulations of dirt, filth or corrosion; lavatories are not supplied with soap, individual towels and a receptacle for their disposal; toilet rooms are not provided with toilet paper.

(11) Castor bean (*Ricinus communis*) plants located in unsecured situations, that pose an immediate danger to the public and safety.

(12) Any situation or activity which exists, is conducted, maintained, or permitted, known at common-law, in equity jurisprudence, specified at California Civil Code Section 3479 et seq., Penal Code Section 370, or elsewhere defined in state law or by the laws of this jurisdiction as a public nuisance and within the authority of DEHS to abate.

(13) Graffiti on any residence, rental housing, multi-residential, commercial or industrial building, structure, sidewalk or driveway.

Renumbered and restated Ordinance #3105 (1986); Amended Ordinance 2717 (1998);

33.033 Resolution.

(a) Whenever a public nuisance as defined herein exists anywhere within this jurisdiction, the Board or Council governing this jurisdiction may, by resolution, declare such to be a public nuisance.

(b) Such resolution may refer to the public nuisance location by the name under which it is commonly known, by street number and name, in reference to adjacent or nearby roads, streets, or highways, by the County Assessor's parcel number(s) (APN), or by an abbreviated legal description.

Renumbered and restated Ordinance #3105 (1986);

33.034 Duty to Abate.

No person or entity shall cause, permit, maintain, conduct, or otherwise allow a public nuisance as defined herein to exist within this jurisdiction. It shall be the duty of every owner, occupant, and person in control of any land or interest therein located within this jurisdiction to remove, abate, and prevent the recurrence of a public nuisance upon such land or interest therein. Any recurrence of a condition may be deemed to be a continuation of the original condition.

Renumbered and restated Ordinance #3105 (1986);

33.035 Criminal and Civil Penalties Applicable.

Violations of this Chapter are also subject to all enforcement, criminal, and civil penalty provisions of Chapter 1 (Authority and Administration) and Chapter 2 (Permits and Hearing Procedures) of this E.H. Code which are incorporated herein by reference and all other remedies and penalties provided by law, and are not limited or superseded by this Chapter.

Renumbered and restated Ordinance #3105 (1986);

33.036 (Reserved)

33.037 Emergency Abatement.

When a public nuisance constitutes an immediate hazard or threat of harm and the situation calls for abatement sooner than the abatement procedures herein otherwise allow, the director and enforcement officers of DEHS may take or cause emergency abatement of such nuisance with such notice to parties concerned, or without notice, as the particular circumstances reasonably allow.

Renumbered and restated Ordinance #3105 (1986);

33.038 Notice to Abate.

After the governing Board or Council of this jurisdiction by resolution determines the existence of a public nuisance, the director of DEHS or designated agent shall issue a "Notice to Abate" by either of the following methods:

(a) Mailing a copy by first class or certified mail addressed to the owner, person, or entity with a mailing address as shown on available tax or assessment rolls of the County of San Bernardino; and by posting a copy at the concerned property.

(b) Personal service upon the owner or occupant of the concerned property. The form "Notice to Abate" shall be substantially in the form following. In the absence of exigent circumstances, the notice may not require abatement in less than ten (10) days.

NOTICE TO ABATE

Issued this: _____
Month Day Year

By virtue of proceedings under authority of San Bernardino County Code Section 33.031 *et seq.*,

YOU ARE HEREBY NOTIFIED TO ABATE from your property described as _____
Assessor's Parcel Number/A PN

Number and Street Post Office

from the County of San Bernardino Assessor's/Tax Records which list the owner as:

_____ of
Name

Address Post Office State Zip

the following public nuisances:

If said nuisances are not abated within _____ days of the above date, the Director of Environmental Health Services or his duly designated officer may order said conditions abated by public employees, private contractor, or other person, and the cost of said abatement and all directly related investigative and administrative costs shall be billed directly to the property owner or levied and assessed against the property as a special assessment lien.

Any appeal from this order must be in writing and brought within ten (10) days to the Director, who will set the same for hearing before a Board of Appeals and notify you of the date of such hearing.

Failure to abate or to appeal within the times allotted may also make you subject to criminal and civil remedies. Your cooperation is appreciated.

Name and Title of Issuing Officer

Department of Environmental Health Services
County of San Bernardino
385 North Arrowhead Avenue
San Bernardino, CA 92415

33.039 Appeal Procedure.

Any person or entity served, constructively or personally, with the notice set forth in Section 33.038 may appeal in writing to the Director of DEHS within ten (10) days of said service. The Director shall cause the matter to be set for hearing before a Board of Appeals and notify the appellant of the date set for such hearing at least fifteen (15) days prior to such date or, if the appellant resides outside the County, at least twenty-five (25) days prior to such date. The Board of Appeals shall act on the appeal and its determination shall be conclusive. The Board of Appeals shall be appointed by the Director and consist of three (3) persons as follows: A DEHS officer but not the notice issuing officer nor anyone having knowledge of the particular case, a public member, a deputy of the County Counsel of San Bernardino County or legal representative of the governing Board/Council of this jurisdiction. Except as provided herein, the provisions of Section 33.029 (Administrative Hearing Procedures) of Chapter 2 of this E.H. Code are incorporated here by reference.

33.0310 Abatement.

If, at the end of the time allowed for compliance in the original notice or as extended in cases of appeal, compliance has not been accomplished, DEHS may cause the abatement by public employees, or by private contractor selected and approved by the governing Board or Council of this jurisdiction in the manner under the terms provided by this chapter, and if such abatement is so carried out, such property shall be subject to a special assessment lien for the costs of the abatement.

33.0311 Payment for Abatement.

(a) Procedure for Payment. When said abatement has been completed, the Director of DEHS shall render to the San Bernardino County Auditor-Controller an itemized statement covering work necessary for the abatement. The Auditor-Controller shall pay the same from the funds of the agency or department causing said work to be done, and the Director shall present to the owner a demand for payment by mail. If payment is not made on behalf of the owner within sixty (60) days after mailing such bill, the Director shall certify to the Auditor-Controller the remaining unpaid cost, together with the information required by law in such cases. The Auditor-Controller shall cause the amount of the same to be entered upon the property from which abatement was accomplished, and the said special assessment and tax shall be included upon the next succeeding tax statement. Thereafter, the amounts of the assessment shall be collected at the same time and in the same manner as County taxes are collected, and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary County taxes, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbancer for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the costs of abatement, as confirmed, relating to such property shall be transferred to the unsecured roll for collection.

(b) Appeals. Any appeal from these charges must be filed within sixty (60) days from the date of billing or receipt of a tax bill which shows abatement charges. The appeal procedure shall be essentially the same as Section 33.039 of this Chapter, and the Appeal Board's decision shall be conclusive.

(c) Cancellation of Claim. All or any portion of any such special assessment, penalty, or costs heretofore entered, shall on order of the Board of Appeals be cancelled by the Auditor-Controller if uncollected, or, except in the case provided for in subdivision (5) hereof, refunded by the County Treasurer if collected, if it or they were entered, charged, or paid;

- (1) More than once;
- (2) Through clerical error;
- (3) Through the error or mistake of the Board of Appeals, the Director, or the person designated by them to give notice to abate regarding any material fact relevant to the determination of a claim.
- (4) Illegally;
- (5) On property acquired after the lien date by the State or by any county, city, school district, or other political subdivision and because of this public ownership, not subject to sale for delinquent taxes.

(d) Procedure for Refund of Payment. No order for a refund under the foregoing section shall be made except on a claim:

- (1) Verified by the person who paid the special assessment, their guardian, executor, or administrator;
- (2) Filed within three (3) years after making the payment sought to be refunded.

The provisions of this Section do not apply to cancellations.

Renumbered and restated Ordinance #3105 (1986);